



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: OK's Cascade Company; Western Catering, Inc.
File: B-257543; B-257562
Date: October 14, 1994

James F. Nagle, Esq., and John Lukjanowicz, Esq., Oles Morrison & Rinker, for OK's Cascade Company; Kenneth Joel Haber, Esq., and Mary C. Suffoletta, Esq., for Western Catering, Inc., the protesters.
Douglas B. Lee, Department of Agriculture, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation of specific proposal features which are not explicitly identified under the solicitation as evaluation criteria is permissible where those features are intrinsically related to, and encompassed by, the criteria that are identified in the solicitation.
2. Price/technical tradeoffs are unobjectionable so long as they are reasonable and consistent with the solicitation evaluation criteria.

DECISION

OK's Cascade Company and Western Catering, Inc. protest the award of several contracts under request for proposals (RFP) No. 49-94-13, issued by the Forest Service, Department of Agriculture, for mobile shower facilities. The protesters raise several challenges to the agency's evaluation and source selection process.

We deny the protests.

The Forest Service issued the solicitation on November 22, 1993, seeking proposals for mobile shower facilities to be used primarily by firefighters, for a base period from the date of award through December 31, 1994, with four 1-year options. The RFP contained 24 line items, each representing coverage of a geographic area for a particular time period

(for example, under line item 14, Reno, Nevada, was to be the base of operations, and the dates of operation were July 1 through October 15, 1994). Offerors were permitted to submit proposals for any number of locations.

The RFP stated that, in selecting proposals for award, technical factors would be more significant than price. The technical factors, in descending order of importance, were equipment, experience, organization, and operating capacity and credit.

Twenty offerors submitted proposals by the January 18, 1994, date set for the receipt of proposals. A technical evaluation team (TET) evaluated the proposals and conducted site visits to observe the offerors' equipment. After discussions were conducted, the agency requested best and final offers (BAFO) due on May 16. The TET evaluated the BAFOs, and contracts were awarded on June 1.

OK's, which was awarded the contract for four locations, challenges the agency's failure to award the company contracts for four additional locations (Wenatchee, Boise, Reno, and Bend). Western Catering contends that it should have been awarded a contract for one of the two line items for Boise. We address each protest in turn.

THE OK'S PROTEST

OK's challenges various aspects of the technical evaluation of its own and the awardees' proposals. In particular, it notes that the RFP stated, at the bottom of the section B listing of line items:

"Equipment offered in and adjacent to the state of California providing for equal number of shower heads for men and women may be given additional credit during the evaluation process."

According to OK's, the company modified its shower units in order to offer an equal number of shower heads for men and women, but the agency downgraded its proposal under the most important technical factor, equipment, because OK's offered what it terms "equal access." In addition, the protester contends that the agency applied an unannounced evaluation criterion by preferring proposals that offered inside dressing areas, a feature that OK's did not propose. OK's also argues that its proposal should have been rated superior with respect to the other technical factors (experience, organization, and operating capacity and credit).

Our Office will not question an agency's evaluation of proposals unless the agency deviated from the solicitation evaluation criteria or the evaluation was otherwise unreasonable. Payco Am. Corp., B-253668, Oct. 8, 1993, 93-2 CPD ¶ 214. In order to establish the unreasonableness of the evaluation, it is not enough that the protester merely disagrees with the agency's judgment or that the protester can point to alternative methodologies available to the agency; rather, the agency's evaluation must be shown to lack a reasonable basis. Id.

Here, the evaluation worksheets demonstrate that the agency did give proposals credit for offering equal numbers of shower heads for men and women. Moreover, the record does not support OK's allegation that its proposal was downgraded for offering equal numbers of shower heads for men and women. Instead, its proposal's rating was lowered because it offered few shower heads, whether for men or women.

OK's does not dispute that the agency was permitted, as part of the evaluation of equipment, to evaluate offers based on the number of shower heads proposed. In this regard, we note that the RFP language concerning additional credit for equal numbers of shower heads was permissive, not mandatory, simply indicating that the agency "may" give extra credit for equal numbers of shower heads.¹ The agency thus complied with the RFP criteria in treating the overall number of shower heads as more significant than the equality of numbers for men and women. Based on our review of the record, we find that the downgrading of OK's proposal due to the relatively low total number of shower heads offered was consistent with the solicitation evaluation criteria.

We also find that it was proper for the agency to consider the fact that OK's was proposing outside dressing areas. Sections L and M indicated that the dressing area proposed would be evaluated. While the solicitation did not explicitly state that inside dressing areas would be preferred, we view that feature as intrinsically related to, and encompassed by, the criteria named in the RFP, such as the heating and security of the dressing area, and whether that area was enclosed. See Marine Animal Prods. Int'l. Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

¹In any event, this factor applied only to locations in or near California, which would not include the Wenatchee (Washington), Boise (Idaho), or Bend (Oregon) locations at issue here.

These issues are essentially the only basis for OK's protest of the selection of another proposal for the Wenatchee location.² Accordingly, since the agency's evaluation of proposals for that location was reasonable and consistent with the evaluation criteria, the protest of that award is denied.

With respect to the Boise location, the awardee, while offering a higher price than OK's (the awardee's daily rate was \$2,800 vs. \$2,040 for OK's), proposed substantially more shower heads than did OK's (16 vs. 12). The technical ratings of the two proposals were otherwise similar. The agency thus needed to perform a price/technical tradeoff to determine whether the awardee's higher price was justified by the technical superiority of its shower equipment. Price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Awards to offerors with higher technical scores and higher prices are thus proper so long as the result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is sufficiently significant to outweigh the cost difference. Here, it was reasonable and consistent with the RFP evaluation criteria for the agency to prefer the awardee's higher-priced proposal because of the higher number of shower heads that it offered. Accordingly, the protest of the award for the Boise location is denied.

With respect to the Bend location, the agency again needed to perform a price/technical tradeoff. In this case, the awardee's proposal was rated lower than that of OK's under the experience criterion, although its proposal offered more shower heads overall than did OK's (14 vs. 12). The agency determined not to award to OK's, because its price was higher (\$2,040) than that proposed by the awardee (\$1,870). Just as the agency could prefer a higher-priced, higher-rated proposal (as it did for the Boise location), it similarly had the discretion to select a lower-priced, lower-rated proposal (as it did for the Bend location), so

²OK's argues that its proposal should have received superior ratings under the less heavily weighted technical factors (experience, organization, and operating capacity and credit). While its proposal was rated highly under those factors, the awardee's superiority under the equipment factor, the most heavily weighted technical factor, coupled with the fact that the awardee's price was lower than that of OK's, plainly provided adequate justification for the selection made.

long as the determination was reasonable and consistent with the RFP evaluation criteria. Because the record here supports the reasonableness of the selection of the contractor for the Bend location, particularly since the evaluated difference between the two proposals' technical merit was reasonably found to be small, the protest of the award of that contract is denied.

With regard to the Reno contract, the awardee, Ben Porta Showers, had conditioned its BAFO on a particular company being selected for award for a contract for food services being procured at the same time under a companion solicitation. Specifically, the awardee wrote in its BAFO that "we would like to be considered for the Reno area only if [another named offeror] receives the [contract for food services]."³ Based on the agency's evaluation, Ben Porta's BAFO was awarded the shower contract on June 1. At that time, the agency intended to award the food services contract to the offeror named in Ben Porta's BAFO. However, due to unforeseen health problems, that other offeror withdrew its proposal on June 6. At that point, the agency contacted Ben Porta to inquire what impact this development might have. Ben Porta replied that its performance would not be affected, and it continued to perform.

OK's contends that Ben Porta's conditional offer was improper and could not be the basis of award. Where an offer is conditioned upon the waiving of material terms of a solicitation, and other offerors are not afforded the opportunity to submit proposals on a similar basis, the conditional offer may not form the basis of award. See, e.g., Advance Gear & Mach. Corp.--Recon., B-228002.2, Feb. 3, 1988, 88-1 CPD ¶ 102; E. C. Campbell, Inc., B-222197, June 19, 1986, 86-1 CPD ¶ 565. In this case, however, Ben Porta did not condition its offer on the waiver of any term, material or otherwise, of the solicitation, and that offer committed the firm to comply with all solicitation terms. This is thus not an instance in which a competition was conducted on an unequal basis. OK's does not contend that Ben Porta was afforded the opportunity to submit a proposal on terms different from those applicable to OK's, nor has it alleged that the agency's action otherwise prejudiced the protester.⁴

³Underlining in original.

⁴It is true that Ben Porta conditioned consideration of its proposal on award of the food service contract to a third party, and that the parties discovered after award to Ben Porta that, contrary to the agency's intent at the time of award, the third party would not be receiving the food

(continued...)

THE WESTERN CATERING PROTEST

Western Catering challenges the award of the two contracts for the Boise location, line items 9 and 10. The two line items were identical, covering the same location for exactly the same dates. Western Catering's proposal listed a price under line item 9 only.

The protester contends that its proposal should have been rated the best technically because its equipment is relatively new and represents the state of the art in the field of mobile showers. The agency responds that Western Catering's equipment is no more state-of-the-art than that of other offerors for the Boise location. Because the protester has not pointed to any way in which the agency's technical judgment in this regard is unreasonable (for example, by providing specific examples demonstrating that its equipment was more modern or otherwise superior to that of its competitors), this protest ground is denied.¹

Western Catering further alleges that its proposal should have been considered for award of either of the two line items (9 and 10) covering the identical services at Boise. As to line item 9, for which Western Catering submitted a proposal, the record supports the agency's statement that the awardee's technical proposal was rated substantially higher than Western Catering's, while its proposed daily rate of \$1,935 was also somewhat higher than the protester's proposed \$1,700 rate (although, as the agency notes, the awardee's price per shower head was actually lower than Western Catering's because it offered more shower heads).

¹(...continued)

service award, so that the condition set forth in Ben Porta's proposal was not fulfilled. The resulting post-award concern (which, as noted above, has apparently been resolved to the contracting parties' satisfaction) is a matter of contract administration not for consideration by our Office. 4 C.F.R. § 21.3(m)(1) (1994).

²Western Catering also contends that its proposal was improperly downgraded for offering equal numbers of shower heads for men and women. We note that the solicitation's limited preference for "equal access" did not apply to the Boise location at issue here. In any event, as with the identical protest ground in the protest filed by OK's, the agency explains that the protester's proposal was rated lower than the awardee's because it offered fewer shower heads overall than the awardee, not because of the equal number of shower heads. Because the evaluation documents support the agency's contention, this protest ground is also denied.

As with the awards challenged by OK's, the issue here is whether the agency's selection of a higher-rated, higher-priced proposal was reasonable and consistent with the solicitation evaluation criteria. Because the protester has not shown that the technical or price evaluations were deficient, and the agency's willingness to pay a higher price for the awardee's superior technical proposal was consistent with the solicitation's assignment of greater weight to technical factors than to price, Western Catering has not presented a basis for our Office to question the price/technical tradeoff.

As to line item 10, although that line item covers the identical services as line item 9, Western Catering failed to indicate in its proposal that it wished to be considered under that line item. Regardless of the agency's reasons for structuring the solicitation as it did in this regard, the protester unambiguously indicated an offer for line item 9 and none for line item 10. The protester has not claimed that its submission of a proposal under line item 9 only was a clerical mistake or otherwise occurred inadvertently.⁶ Because the proposal contained an offer only for line item 9, the agency did not act improperly in considering Western Catering for that item only.

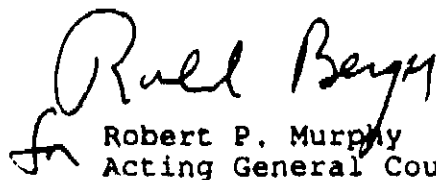
Western Catering asserts that the agency's handling of this matter reflected bias in favor of the company awarded the contract under line item 10. Specifically, the protester contends that the contracting officer and the awardee's owner are "social friends" and go fishing and hunting together. We deny this protest ground because the record contains no evidence which suggests that the contracting officials acted with the intent to injure the protester or otherwise in bad faith. See Group Technologies Corp., Electrospace Sys., Inc., B-250699 et al., Feb. 17, 1993, 93-1 CPD ¶ 150.

The lack of a factual basis for the protester's allegations in this regard is demonstrated by Western Catering's claim that the agency treated the awardee more favorably than the protester because the awardee, allegedly, also submitted a proposal for line item 9 only, but the agency treated that offer as applying to line item 10 as well. If true, this would represent improper unequal treatment of offerors. In fact, however, the awardee submitted a written statement prior to the date for submission of BAFOs, in which it stated, "This company is bidding for both those [Boise]

⁶In the companion procurement for food services, for which there were also two identical line items for the Boise location, Western Catering apparently did indicate that it wished to be considered under either line item.

locations and should we be selected for one, then we would not be able to accept the other." The awardee thus made plain, as Western Catering did not, that its proposal applied to both line items 9 and 10. In considering the awardee's proposal under line item 10, the agency did not display favoritism or unequal treatment in favor of that company.

The protests are denied.


Robert P. Murphy
Acting General Counsel